Supreme Court, U.S.
FILED
06-486 SEP 5 - 2006
OFFICE OF THE CLERK

No.

In The Supreme Court of the United States

LOG FURNITURE, INC. and CARI ALLEN,
Petitioners,

v.

STEVEN CALL; RAY,QUINNEY & NEBEKER; GRANITE STONE, L.C.; MACHINERY HARDWARE & SUPPLY, INC.; and DAVID HARRIS,
Respondents.

Petition for Writ of Certiorari To The Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Nathan W. Drage
ATTORNEY FOR PETITIONER
LOG FURNITURE, INC.
4766 Holladay Blvd.
Holladay, Utah 84117
(801) 273-9300

Cari Allen
PETITIONER *PRO SE*
1199 S 1500 E
Bountiful, UT 84010
(801) 674-9659

QUESTION PRESENTED

1) Whether a corporate chapter 7 bankruptcy debtor has a right to counsel in its own bankruptcy liquidation proceeding; 2) whether a corporate chapter 7 bankruptcy debtor and/or its board of directors and/or its chief executive officer itself have standing to challenge a bankruptcy filing purporting to be made on the corporation's behalf by an entity purporting to be (but whose status as such is disputed) a stockholder; and 3) can a stockholder (whose status as stockholder is disputed) place a Nevada corporation into bankruptcy?

LIST OF ALL PARTIES

In addition to the parties named on the caption, other parties who have participated in these appeals include:

Golden Meadows Properties, L.C.
c/o Ralph C. Petty
Attorney at law
10 W Broadway, Suite 800
Salt Lake City, Utah 84101

Elizabeth R. Loveridge, Chapter 7 Trustee
c/o Reid Lambert
Attorney at law
265 E 100 S, Suite 300
Salt Lake City, Utah 84111

CORPORATE DISCLOSURE STATEMENT

There is a parent company which owns 100% of the stock of the Petitioner Log Furniture, Inc. It is disputed who actually owns the stock but is alleged to either be Golden Meadows Properties, L.C., a Utah limited liability company, or Granite Stone, L.C., a Utah limited liability company. Neither the corporation nor the company are publicly held.

TABLE OF CONTENTS

QUESTION PRESENTED.....i

LIST OF ALL PARTIES.....ii

CORPORATE DISCLOSURE STATEMENT.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv-v

OPINIONS BELOW.....1

JURISDICTION.....1-2

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES..2
Fifth Amendment

STATEMENT OF THE CASE.....2-6

ARGUMENT.....6-16

APPENDIX.....Attached in separate volume

TABLE OF AUTHORITIES

In re Acoustic Fibers Sound Systems, Inc., 20 BR 769 (Bankr.S.D. Ind. 1982).....16
Baker v. Carr, 369 U.S. 186 (1962).....11
In re B-K of Kansas, Inc., 82 B.R. 135 (Bankr. D. Kan. 1988).....9
Chitex Communications, Inc. v. Kramer, 169 B.R. 587, 589 (S.D.TX 1994).....15
Club v. Morton, 405 U.S. 727 (1972).....2
Coleman v. Miller, 307 U.S., at 438.....11
Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985).....12
In re Doemling, 127 B.R. 954 (W.D.Pa.1991).....8
In re Dow Corning Corp., 270 B.R. 393, 398-99 (Bankr. E.D.Mich.2001).....8
In re Farrell Realty Co., 10 F.2d 612, 614 (2nd Cir. 1925).....16
Flast *et al.* v. Cohen, 392 U.S. 83 (1968).....11
In re Giggles Restaurant, Inc., 103 B.R. 549, 553 (Bankr. D.N.J. 1989).....16
Harrison v. Wahatoyas, L.L.C., 253 F.3d 552 (10th Cir. 2001).....9
In re I.D. Craig Service Corp., 118 B.R. 335 (Bankr. W.D.Pa. 1990.....16
In re Industrial Concerns, 209 B.R. 609 (Bk. W.D.Pa. 2003).....16
John B. Hull, Inc. v. Waterbury Petroleum Products, Inc., 558 F.2d 24 (2d Cir. 1978).....12
Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994).....15
In re King Brand Food Products, Inc., 52 B.R. 109 (Bankr. Fla. 1985).....16
Price v. Gurney, 323 U.S. 696 (1944).....14,15,16
Quarter Moon Livestock Co., 116 B.R. 775, 778 (Bank. D. ID 1990).....16
Reliable Elec. Co., Inc. v. Olson, 726 F.2d 620 (10th Cir. 1984).....9
In re Roy Stanley, Inc., 217 B.R. 23, 25 (Bankr.N.D.N.Y.1997).....8
Schlesinger v. Reservists Committee to Stop War *et al.*, 418 U.S. 208 (1974).....11
In re SeaEscape Cruises, Ltd., 201 B.R. 321, 323 (Bankr. S.D.Fla.1996).....8
Sierra Club v. Morton, 405 U.S. 727 (1972). 10

In re Swift Aire Lines, Inc., 30 B.R. 490, 495 (9th Cir. BAP 1983)..8
In re T.Craft Aviation Service, Inc., 187 B.R. 703 (Bankr. N.D. Okl. 1995).....9
Tri-State Generation and Transmission Asso. Inc. v.Shoshone River Power, Inc., 805 F.2d 351 (10th Cir. 1986).....12
In re Wet-Jet International, Inc., 235 B.R. 142 (D.Mass. 1999)...16
Wiswall v. Sampson, 55 U.S. 52 (1852).....14
In re Yellow Cab Co-op. Assn., 144 B.R. 505 (D.Colo 1992).....16
In re Yellow Cab Cooperative Association, 132 F.3d 591 (10th Cir. 1997).....11
U.S. Constitution Art. III §2.....10
U.S. Constitution Fifth Amendment.....9
11 U.S.C. § 323(a).....8
11 U.S.C. § 541(a).....8
28 U.S.C §158(a)(1) and (c)(1)(A).....1, 2
28 U.S.C. §158(d).....1, 2
28 U.S.C. §1254.....2
28 U.S.C. §1654.....9
Nevada Revised Statute §78.115 15
Nevada Revised Statute §78.120.....11,14,15
Nevada Revised Statute §78.139(5).....12
Utah Code Annotated §43-1-2.....17
Bankr. Rule 9010.....9

OPINIONS BELOW

Review is sought of a panel decision in the U.S. Court of Appeals for the Tenth Circuit which was the product of appeals from three different decisions entered in the United States District Court for the District of Utah on November 4, 2004, April 7, 2005 and August 2, 2005 affirming three U.S. Bankruptcy Court decisions, which although not formally consolidated pursuant to Fed.R.App.Pro. 3(b)(2) (even though Petitioners had unsuccessfully moved to consolidate them), nonetheless were concluded with the single opinion in the Tenth Circuit Court of Appeals by a panel consisting of the Honorable Circuit Judges Carlos F. Lucero, John C. Porfilio and Harris L. Hartz dated May 11, 2006. A Petition for Rehearing was timely filed and denied by Order entered June 5, 2006.

This Order and Judgment disposed of all the parties' claims. The Order and Judgment affirmed the decisions entered in each matter by the U.S. District Court for the District of Utah which affirmed three Orders originally entered in the United States Bankruptcy Court for the District of Utah in Bankruptcy Case No. 03-36822GEC and Adversary Proceeding Nos. 04P-2497GEC and 03P-2466. The District Court orders affirmed decisions of the United States Bankruptcy Court for the District of Utah denying a Motion to Dismiss by stockholder Golden Meadows Properties, L.C. joined by Petitioners and an Adversary Proceeding, and dismissing a Bankruptcy Adversary Proceeding by Petitioners against Respondents based upon state law claims.

JURISDICTION

Appellate jurisdiction in the United States District Court was granted under 28 U.S.C §158(a)(1) and (c)(1)(A) of the three U.S. Bankruptcy Court Orders at issue. Appellate jurisdiction in the Tenth Circuit was granted under 28 U.S.C. §158(d). Timely Notices of Appeal to the U.S. District Court for the District of Utah were filed April 9, 2004, June 2, 2004, and September 23, 2004. Final orders affirming the Bankruptcy Court were entered on November 4, 2004, June 13, 2005 with reconsideration denied August 2, 2005, and September 28, 2005. Notices of Appeal to the Tenth Circuit

Court of Appeals were filed November 15, 2004, August 22, 2005, and October 5, 2005. This is an appeal of the final consolidated Order and Judgment entered May 11, 2006, for all three Club v. Morton, 405 U.S. 727 (1972).
appeals in the Tenth Circuit Court of Appeals. That Order disposed of all the parties' claims. A Petition for Rehearing *En Banc* was filed and an order denying the Petition for Rehearing was entered June 7, 2006.

Appellate jurisdiction in the United States District Court was granted under 28 U.S.C §158(a)(1) and (c)(1)(A). Appellate jurisdiction in the Tenth Circuit Court of Appeals was granted under 28 U.S.C. §158(d). Review of the Tenth Circuit Court of Appeals decision in the United States Supreme Court is permitted by writ of certiorari under 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

U.S. Constitution Article III, § 2 - "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ."
U.S. Constitution Fifth Amendment: ". . .No person shall . . . be deprived of life, liberty, or property, without due process of law."
11 U.S.C. §101(41) - text in Appendix
11 U.S.C. §109(b) - text in Appendix
11 U.S.C. § 323(a) - text in Appendix
11 U.S.C. § 541(a) - text in Appendix
11 U.S.C. §§554(c) - text in Appendix
11 U.S.C. §726(a)(6) - text in Appendix
28 U.S.C §158(a)(1) and (c)(1)(A) - text in Appendix
28 U.S.C. §158(d) - text in Appendix
28 U.S.C. §1254 - text in Appendix
28 U.S.C. §1654 - text in Appendix
Nevada Revised Statute §78.115 - text in Appendix

Nevada Revised Statute §78.120 - text in Appendix
Nevada Revised Statute §78.139(5) - text in Appendix
Utah Code Annotated §43-1-2 - text in Appendix
Bankr. Rule 9010 - text in Appendix

STATEMENT OF THE CASE

The basis of this proceeding is that a disgruntled spiteful creditor who was originally owed less than $10,000 in principal, who maliciously conspired with his attorney to destroy a business and went to any lengths of fraud, distortions, misrepresentations, manipulations and deceit to do so. The creditor through a subterfuge based on fabricated facts created from thin air by his counsel, claimed to have become an owner of shares in a corporation and that he could thereby exercise management of the corporation to force its dissolution. The creditor was a renegade interloper with no claim to legitimacy claiming to have taken over a corporation and for which they would lead courts to believe the corporation cannot seek redress. The corporation and its management and actual owner have been denied the opportunity to have counsel represent them or to have standing to dispute this imposter's sabotage and destruction of the corporation. The lower courts have blindly and completely ignored certain stark realities in the case.

Log Furniture, Inc. was a log furniture manufacturing and selling company organized in 1999 as a Nevada private corporation, doing business in Utah. When formed, all 1,000,000 shares of stock which were both issued and certificated were owned by Cari Allen. In direct exchange for title to some real estate, Cari Allen sold her stock to Golden Meadows
Properties on July 21, 2000. A trade debt was incurred for supplies to Respondent Granite Stone's predecessor in interest, Machinery Hardware and Supply, during 2001 which was unpaid and resulted in a state court collection action where a judgment for approximately $17,000 was entered in 2002 against Log Furniture and Cari Allen personally. This entire set of appeals arises from Machinery Hardware and Supply's attempts to execute upon their $17,000 judgment against Cari Allen. They mistakenly and deceptively claim Cari Allen owned the stock in Log Furniture, Inc. and that by

conducting a sheriff's execution sale without ever even trying to physically locate or attach the stock certificate itself they nonetheless magically obtained ownership of the stock then owned by Golden Meadows. Solely because they assert they purchased stock, which Cari Allen no longer owned, they claimed to become the sole shareholder of Log Furniture, Inc. and then forced it into a Chapter 7 liquidation bankruptcy proceeding. This was done despite a shareholder's inability to do so under governing Nevada corporation statutes. Each of the three Tenth Circuit Court appeals arise from Petitioners' thus far futile efforts simply have their day in court to - 1) have a court fully and properly and actually consider the facts about the ownership of the stock and transfer of the certificate which was never levied upon and law applicable to these facts and 2) shareholder inability to place corporations in bankruptcy. Not one of the lower court decisions ever get to the factual or legal substance of the stock certificate transfer dispute, other than Bankruptcy Judge Thurman in a Temporary Restraining Order hearing ruling in Petitioners' favor therein. Not a single other judge in any of the myriad proceedings either received evidence respecting the transfer, delivery and possession of Log Furniture, Inc.'s only issued stock certificate (or even acknowledge the existence thereof), nor applied governing statutes about title to stock certificates upon endorsement and delivery of the certificate, necessity of attachment of negotiable instruments for execution sales which did not occur, etc.

The basic critical point is this - The Chapter 7 bankruptcy filing for the Nevada corporation by an entity claiming to be a shareholder is not an authorized filing under any version of facts or law. Shareholders are not authorized to file bankruptcy petitions under Nevada nor most states' laws. The Petition is *facially* defective. The Board of Directors of Log Furniture, Inc., which is the *only* authority to authorize a bankruptcy petition under Nevada law, and the actual shareholder, asserts this Chapter 7 filing is both facially and substantively defective. The entity claiming to be a shareholder on the bankruptcy petition filing is not and could not have ever been a shareholder. It claimed to have acquired shares from a person who did not own them. It based its claim to be shareholder in reliance on orders it had obtained with erroneous and misleading content in state court proceedings which were set aside. The

Bankruptcy Court, without ever conducting an evidentiary hearing, issued orders explicitly relying on the set aside state court orders which now Respondent Granite Stone claims prevents any determination or examination of the issue. Not one court has received the negotiated and endorsed stock certificate into evidence. The Bankruptcy Court is under an *affirmative duty* to ascertain that the persons claiming to have authority to file on behalf of a corporation actually have the authority to do so, whether brought to the Court's attention by a creditor, the actual authorized parties, the corporation's management, another shareholder, a trustee, the U.S. Trustee, or any party who's rights may be affected, as well as *sua sponte*. Yet in violation of the right to due process before depriving a legal person of property, this has never been done.

After Granite Stone filed the chapter 7 petition purporting to act on behalf of the corporation, the corporation and its shareholder filed the Adversary Proceeding herein challenging the propriety of the filing on the bases of lack of ownership of the stock by the interloper imposter shareholder, Granite Stone, L.C., and an abject failure to comply with Nevada corporate law and seeking damages for such acts. Nevada law requires management of Nevada corporations, much less forcing dissolution thereof, to be solely exercised by their boards of directors, *not shareholders*.

In the only evidentiary hearing ever conducted in any court anywhere regarding the facts of this case, on November 7, 2003, Bankruptcy Court Judge William T. Thurman sitting in place of the judge assigned to the case (Bankruptcy Court Chief Judge Glen E. Clark) who was out of town, received sworn testimony and documentary evidence under the Rules of Evidence. After over four hours of testimony, Judge Thurman found that the stock ownership was a question "going to the merits . . . so serious, substantial, difficult and doubtful as to make the issue ripe for litigation and *deserving of more deliberate investigation* [emphasis added]" and issued a Temporary Restraining Order restraining the interim chapter 7 trustee from liquidating the corporation. Not even the amount of investigation explored by the four hour evidentiary hearing before Judge Thurman has since occurred, much less a more intensive hearing. No full litigation, no evidentiary hearing, no more deliberate investigation has ever occurred.

The hearing to extend that Temporary Restraining Order into a preliminary injunction had been scheduled with a Motion to Dismiss the main bankruptcy case on November 20, 2004, before Judge Clark. Granite Stone represented at that hearing that State Court Judge Tyrone Medley in the collection action in the State of Utah Third District Court had already determined that Granite Stone acquired the stock at their execution sale, that such determination was binding under collateral estoppel in the Bankruptcy Court and the Bankruptcy Court should abstain from considering the issue. Judge Clark received no evidence and explicitly reciting reliance on the Medley Orders, denied the Motion to Dismiss asserting the corporate debtor did not have standing to challenge the imposter filing. There was no evidentiary hearing nor order respecting the motion to enter a preliminary injunction and indeed, no order has ever been entered resulting from that hearing.

That ruling was brought before the U.S. District Court for the District of Utah in Case 2:03CV1030. Granite Stone argued again that the stock ownership issue had already been determined by state court Judge Medley and requested that clarification of his ruling be made therein as to which all parties agreed. The District Court after hearing on November 24, 2003, entered a Stipulated Temporary Restraining Order mirroring that issued by Bankruptcy Judge Thurman and reserving the determination of the stock ownership claim to state court Judge Medley. Judge Dee Benson subsequently granted leave for an interlocutory appeal. The Court however on May 14, 2004, rescinded the Order granting the interlocutory appeal, dissolved the Temporary Restraining Order and dismissed the appeal. The corporation had continued to operate until that time.

Following the November 20, 2003, Bankruptcy Court ruling that the corporation did not have standing to challenge an imposter shareholder acting in its behalf, and the stipulation on the record and entered in the Stipulated Temporary Restraining Order that stock ownership be clarified in state court, Golden Meadows Properties, L.C. filed a Motion to Dismiss in its own right based upon its standing as the actual shareholder regarding the lack of compliance with Nevada corporate law. Granite Stone again argued that Judge Medley had already determined the stock ownership issue

and that the Bankruptcy Court was bound thereby. Bankruptcy Judge Clark, without receiving any testimony or documentary evidence submitted under the Rules of Evidence and stating on the record that he had received no evidence, explicitly reciting the Medley Orders and their preclusive effect under the Rooker-Feldman doctrine and reading Nevada law to allow shareholders to perform management, denied that Motion to Dismiss on January 5, 2004, with its Order entered March 30, 2004. Judge Clark's denial of the Motion to Dismiss was the subject of the appeal in Tenth Circuit Court Case No. 05-4228.

The state court Judge Medley Orders and any implication which Granite Stone had attributed to them in the several hearings referenced were vacated, set aside and rescinded by Judge Medley on March 6, 2004, ruling that any such finding or inference that he had already determined ownership of the stock was untrue, unwarranted and worked an injustice. However, the deceptive and misleading premise urged by counsel for Respondents had already formed the premise for the Bankruptcy Court's determination of ownership from which it refused to review the issue.

A pre-trial scheduling conference was scheduled before Judge Clark for the Adversary Proceeding on March 30, 2004. Appellants filed a parties' planning meeting report at which Granite Stone had refused to participate. After reiterating that only the trustee could act on behalf of the debtor as if they were the same, Judge Clark recited Tenth Circuit case law regarding management of dockets and dismissed the Adversary Proceeding with prejudice on April 20, 2004. There was a final Order Granting Motion to Dismiss Improper Appeal and Affirming Bankruptcy Court Order Dismissing Adversary Proceeding With Prejudice entered in the United States District Court November 4, 2004. That Order affirmed the Dismissal entered in the United States Bankruptcy Court for the District of Utah in Adversary Proceeding No. 04P-2497GEC. Review of that dismissal and its affirmation by the U.S. District Court was the basis for the appeal in Tenth Circuit Court Case No.04-2476.

ARGUMENT

1) A corporate Chapter 7 bankruptcy debtor has a right to counsel

in its own bankruptcy liquidation proceeding.

The Tenth Circuit panel opinion from a panel consisting of Judges Porfilio, Hartz and Lucero departed from the accepted and usual course of judicial proceedings and has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. The panel, authored by Judge Porfillo, elected to make an astonishingly injudicious statement departing from accepted, usual judicial proceedings in stating that, "What these three cases now present to us is a tangled, nearly indecipherable mess of repeated and convoluted contentions engulfed in more smoke than a Friday boys-night-out poker jamboree." Such language is more Mark Twain than scholarly legal analysis worthy of a United States Court of Appeals upon which society depends and is in need of.

Log Furniture, Inc. as a debtor may represent itself in its own bankruptcy proceeding. A corporation may only appear through counsel. The Chapter 7 Trustee of the estate is not the debtor, Log Furniture, Inc., and represents the estate, not the debtor, whether in bankruptcy court or any other court. An "estate" is created each time a bankruptcy proceeding is commenced. 11 U.S.C. § 541(a). Like a corporation or a trust, a bankruptcy estate is a distinct legal entity, In re Swift Aire Lines, Inc., 30 B.R. 490, 495 (9th Cir. BAP 1983); In re Dow Corning Corp., 270 B.R. to 393, 398-99 (Bankr.E.D.Mich.2001); In re Roy Stanley, Inc., 217 B.R. 23, 25 (Bankr.N.D.N.Y.1997); In re SeaEscape Cruises, Ltd., 201 B.R. 321, 323 (Bankr.S.D.Fla.1996). The bankruptcy estate exists apart from the debtor. It acts through its legal representative, the bankruptcy trustee, 11 U.S.C. § 323(a). The bankruptcy estate is the foundation upon which the entire bankruptcy process rests. When the bankruptcy trustee acts, she acts as the representative of the bankruptcy estate, not as a representative of the debtor. The Trustee is not the debtor. "The debtors and the estate are not interchangeable." - In re Doemling, 127 B.R. 954 (W.D.Pa.1991). Neither the Trustee nor counsel for the Trustee is counsel retained by the Debtor corporation. While the Trustee can appear in his or her own stead, such representation of the estate does not substitute for the debtor. Counsel for the Trustee is not counsel for the Debtor in this

case any more than in any other Chapter 7 proceeding.

Log Furniture has a constitutional and statutory right to appear independently in its own stead through counsel. This is fundamentally critical where the very jurisdiction upon which appointment of a trustee is premised, is being challenged. The law is well established that a corporation may appear and defend its interests, *see* In re T.Craft Aviation Service, Inc., 187 B.R. 703 (Bankr. N.D. Okl. 1995); In re B-K of Kansas, Inc., 82 B.R. 135 (Bankr. D. Kan. 1988). There are fundamental fifth amendment due process rights of a corporation to be able to both appear and be represented by counsel. This would seem to be self evident, but as explained in Reliable Elec. Co., Inc. v. Olson, 726 F.2d 620 (10th Cir. 1984), "A fundamental right guaranteed by the Constitution is the opportunity to be heard when a property interest is at stake."

That right and how it is maintained is set forth by statute at 28 U.S.C. §1654:

> Appearance personally or by counsel. In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

It is rather disingenuous, if not bizarre, to suggest Log Furniture, Inc. is not a party to its own bankruptcy proceeding. Bankr. Rule 9010 similarly states:

> Representation and Appearances; Powers of Attorney (a) Authority to act personally or by attorney, A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in the entity's own behalf or by an attorney authori zed to practice in the court, and (2) perform any act not con stituting the practice of law, by an authorized agent, attorney in fact, or proxy.

As set forth in Harrison v. Wahatoyas, L.L.C., 253 F.3d 552 (10th Cir. 2001) - "The rule is well established that a corporation can appear in a court of record only by an attorney at law." This rule is clear and easy to understand yet ignored by the lower courts including the three judge panel of the Tenth Circuit which issued the rule to begin with.

2) A corporate Chapter 7 bankruptcy debtor and/or its board of directors and/or its chief executive officer have standing to challenge a bankruptcy filing purporting to be made on the corporation's behalf by an entity purporting to be (but whose status as such is disputed) a stockholder.

Log Furniture does not claim that it is unaffected by a bankruptcy. However, it does claim 1) that a bankruptcy proceeding does not eliminate corporate existence, 2) that it is entitled to stand before the courts, and 3) that it may proclaim "This Granite Stone is an imposter who does not own me and does not have authority to act for me." This is not a claim whatsoever that Log Furniture is a separate entity that exists "outside of the bankruptcy, " as suggested by the Tenth Circuit panel opinion. The critical question is whether it is the entity that is in the bankruptcy and who can speak for it. The panel opinion reference to Cari Allen as the "former management" is at odds with the law in that if the bankruptcy petition was invalidly filed by a non-shareholder (or even if acting as a shareholder), then the protesting management is the "current lawful" management.

Public policy and common sense mandates that a corporation have standing to challenge a wrongfully filed bankruptcy petition purportedly made on its behalf which subjects it to a bankruptcy liquidation and dissolution. Or the interest of its lawful management to challenge such filing made without actual or apparent legal authority. A Chapter 7 proceeding has the very purpose to dismember and liquidate the corporation's assets to pay creditors. "Who" can do that is the first question in a petition. This is a classic form of standing long recognized by the United States Supreme Court, to wit: a pecuniary interest, Sierra Club v. Morton, 405 U.S. 727 (1972).

Article III, § 2, of the U.S. Constitution provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treatics made, or which shall be made, under their Authority . . . ." It is clear that the cause of action herein is one which arises under the "laws of the United States." Standing is a concept derived from the

"case or controversies" requirement of Article III of the Constitution, In re Yellow Cab Cooperative Association, 132 F.3d 591 (10th Cir. 1997). It's purpose is to assure that a litigant has an actual stake in an outcome so that the Courts are not used as sounding boards for expressions of public policy as was often attempted with respect to anti-war, civil rights, church/state matters and environmental claims in the 1960's and 1970's, *see* Simon v. Eastern Kentucky Welfare Rights Organization *et al.*, 426 U.S. 26 (1976); Schlesinger v. Reservists Committee to Stop War *et al.*, 418 U.S. 208 (1974); Flast *et al.* v. Cohen, 392 U.S. 83 (1968). The modern expression of the doctrine arose in Baker v. Carr, 369 U.S. 186 (1962), which establishes the elements of standing under Article III in Federal Court as follows:

Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law. . . . It would not be necessary to decide whether appellants' allegations . . . will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it. They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," Coleman v. Miller, 307 U.S., at 438, not merely a claim of "the right, possessed by every citizen, to require that the Government be administered according to law . . . ." Fairchild v. Hughes, 258 U.S. 126, 129; compare Leser v. Garnett, 258 U.S. 130. They are entitled to a hearing and to the District Court's decision on their claims. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163.

Cari Allen had individual standing because she owned a right to redeem her shares of stock which had been sold to Golden Meadows properties upon repayment of her own and Log Furniture's loans. Cari Allen as Director of Log Furniture, Inc. has statutory standing not in an individual capacity but precisely because of her position as director under Nevada Revised Statute §78.120-"the

board of directors has full control over the affairs of the corporation. . .The business of every corporation must be managed by a board of directors or trustees" and more importantly Nevada Revised Statute §78.139(5), "Directors may resist a change or potential change in control of the corporation if the directors by a majority vote of a quorum determine that the change or potential change is opposed to or not in the best interest of the corporation." The public interest in maintaining commerce and the corporation's "right to continue business" is a fundamental property interest recognized both by case law, Tri-State Generation and Transmission Asso. Inc. v. Shoshone River Power, Inc., 805 F.2d 351 (10th Cir. 1986); John B. Hull, Inc. v. Waterbury Petroleum Products, Inc., 558 F.2d 24 (2d Cir. 1978); and by Bankruptcy Judge Thurman's Order entered in this very proceeding. The continuation of its corporate existence is inherently a vital critical property interest at stake for the lawful corporation.

If the lawful managers of the corporation, lawfully installed pursuant to statute and bylaws, do not have standing to challenge an imposter claiming to proceed on the corporation's behalf, the question is better put - then who does? Would the Board of Directors or CEO of IBM or Microsoft be prevented from challenging some John Q. Smith character off the street who files a Chapter 7 petition claiming to be acting for IBM or Microsoft? Should Log Furniture, Inc. be denied the same due process because it is a small business?

The panel opinion curiously cites Commodity Futures Trading Comm'n v. Weintraub, 471 U.S. 343 (1985), yet rules directly contrary to the explicit language therein. The panel's argument was in the section claiming that Log Furniture has no *alter ego* existing outside bankruptcy and is cited for the proposition that "[T]hose assets, including the claims asserted by the attorneys and Allen, are within the sole control of the Trustee in Bankruptcy whose duty it is to 'collect the property of the estate and reduce it to cash.'" Yet that argument in the context of whether corporate management had standing to argue on behalf of a corporation wrongfully filed in bankruptcy and whether the corporation continues to exist as a legal entity *inside* a wrongfully filed or any other bankruptcy, is in direct conflict with the actual language used by the U.S. Supreme Court:

As even this brief and incomplete list should indicate, the

> Bankruptcy Code gives the trustee wide-ranging management authority over the debtor. See 2 Collier on Bankruptcy ¶ 323.01 (15th ed. 1985). In contrast, ***the powers of the debtor's directors are severely limited***. Their role is to turn over the corporation's property to the trustee and to provide certain information to the trustee and to the creditors. §§ 521, 343. Congress contemplated that when a trustee is appointed, he assumes control of the business, and the debtor's directors are "completely ousted." See H.R.Rep. No. 95-595, pp. 220-221 (1977). In light of the Code's allocation of responsibilities, it is clear that the trustee plays the role most closely analogous to that of a solvent corporation's management. Given that the debtor's directors retain ***virtually no management powers***, they should not exercise the traditional management function of controlling the corporation's attorney-client privilege, see supra, at 1991, unless a contrary arrangement would be inconsistent with policies of the bankruptcy laws. [Emphasis added].

What the panel ignored is that in the decision which was about exercise of waiving attorney/client privilege and not standing, the Supreme Court recognized two things - continued existence of management and therefore, the corporation, and their ability to conduct certain shell functions. It said "severely limited" ***NOT*** "eliminated." It said "virtually no management powers" ***NOT*** "none." This panel's holding to the contrary of exactly what the Supreme Court held is at odds with this framework of post-bankruptcy corporate existence outlined by the U.S. Supreme Court and the plain language of the Bankruptcy Code .

The Code clearly specifically defines a person entitled to file bankruptcy in 11 U.S.C. §101(41) as being, "'person' includes individual, partnership, and corporation." 11 U.S.C. §109(b) states "a person may be a debtor under chapter 7 of this title (with some nonapplicable exceptions)." 11 U.S.C. §§554(c) and 726(a)(6) by providing that if there is an excess of assets after administration, they be distributed to the debtor, recognize the continued existence of a debtor - any debtor - *after* a liquidation bankruptcy. The Code could not make a nonsense and meaningless requirement that assets be either abandoned to a debtor or Other aspects of the panel

decision at odds with U.S. Supreme Court precedent is that the District Court TRO reserving determination of the stock ownership to the state court which was dissolved on May 26, 2004 was nonetheless in effect and required to be obeyed when it was in effect from November 24, 2003, to May 26, 2004, and the panel decision that it was of no effect when it was in effect is wrong and conflicts with Wiswall v. Sampson, 55 U.S. 52 (1852). The holding that the bankruptcy court need not determine the authority of the persons purporting to act on behalf of a corporate entity under governing state law clearly conflicts with Price v. Gurney, 323 U.S. 696 (1944).

3) A stockholder (whose status as stockholder is disputed) cannot place a Nevada corporation into bankruptcy

The conclusions reached by the U.S. Bankruptcy Court for the District of Utah, the U.S. District Court for the District of Utah and the U.S. Tenth Circuit Court of Appeals panel that Granite Stone was a stockholder of Log Furniture, Inc. and, as such, was authorized under Nevada state law to place the corporation into bankruptcy constitutes decisions in conflict with decisions of other United States court of appeals and of the United States Supreme Court on the same important matter.

There was no resolution of the Board of Directors of Log Furniture, Inc. authorizing a bankruptcy filing. That fact is unchallenged that Granite Stone, L.C., a Utah limited liability company, claims to have authorized the filing as a shareholder (as assignee of creditor Machinery, Hardware & Supply, Inc. [MHS]). Although whether Granite Stone is a shareholder with voting rights is very much in dispute, its shareholder resolution does not even purport to be an action by the corporation's Board of Directors. That defect is an insurmountable bar. The resolution further purports to effect some legal nullities under Nevada law which defeat the Petition on its face.

Nevada Revised Statute §78.120 mandates that the business of the corporation be conducted through the directors - "The business of every corporation ***must*** be managed by a board of directors or trustees, ***all of whom must be natural persons who are at least***

18 years of age [emphasis added]." Nevada Revised Statute §78.115 mandates that there be at least one director - "A corporation must have at least one director...[emphasis added]" Consequently, any person claiming to have "eliminated" a board of directors of a Nevada corporation would be making a false representation. Nevada law requires the a director be a "natural person" so, apart from the elimination of the existing board being a nullity at law, appointment of a limited liability company as a director is also a nullity. There is not a "natural person" who filed the Petition. It was signed by David Harris as "President of Machinery Hardware & Supply, Manager of Granite Stone, L.C." i.e. the CEO of a corporation acting as manager for a limited liability company which purports to act as a shareholder. Harris does not purport himself to be an officer or director or shareholder of Log Furniture, Inc. This violates the public policy established by the Nevada legislature and the plain language of the Nevada statutes.

The determination of whether a corporate bankruptcy petition is authorized is jurisdictional. In Keenihan v. Heritage Press Inc., 19 F.3d 1255 (8th Cir. 1994), was an action amazingly similar to the present case where pledged stock had gone into default and the issue was who had the voting rights, the Court stated:

> [W]e believe it *improper* for the bankruptcy court to assume jurisdiction over a case simply because there is debt involved; in short, there first must be valid jurisdiction over the matter before a bankruptcy court can proceed. In the absence of a valid petition, a bankruptcy court has no basis upon which to dispose of a corporation's assets or resolve its debt status. [Emphasis added].

As stated in Chitex Communications, Inc. v. Kramer, 169 B.R. 587, 589 (S.D.TX 1994) in an action brought by the wife of the president as being a party whose rights may be affected, "The Supreme Court long ago decided that authority to file a bankruptcy petition is found in state law." This well-established, long standing principle was determined in Price v. Gurney, 324 U.S. 100 (1045) finding that stockholders have no authority generally to commence a bankruptcy proceeding:

The District Court in passing on petitions filed by corporations under Chapter X must of course determine whether they are

filed by those who have authority so to act. In absence of federal incorporation, that authority finds its source in local law. If the District Court finds that those who purport to act on behalf of the corporation have not been granted authority by local law to institute the proceedings, ***it has no alternative but to dismiss the petition***. It is not enough that those who seek to speak for the corporation may have the right to obtain that authority. . . But nowhere is there any indication that Congress bestowed on the bankruptcy court jurisdiction to determine that those who in fact do not have the authority to speak for the corporation as a matter of local law are entitled to be given such authority and therefore should be empowered to file a petition on behalf of the corporation. [Emphasis added].

Congress made no changes to this precedent in the Bankruptcy Code and Price has been routinely interpeted and applied to that effect by bankruptcy courts: *See* In re Industrial Concerns, 209 B.R. 609 (Bk. W.D.Pa. 2003) - dismissing action by 50% of shareholders under nearly identical state corporation statutes as applicable herein, finding:

> The decision to initiate a voluntary bankruptcy case on behalf of a corporation must be made by those persons having the power of managing the corporation. The power to manage a business corporation resides in the board of directors.

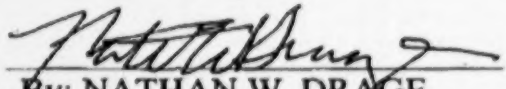
This U.S. Supreme Court precedent is consistently and uniformly followed in all jurisdictions except now in Utah and the Tenth Circuit and is oft reiterated by all courts, *see also* In re Farrell Realty Co., 10 F.2d 612, 614 (2nd Cir. 1925); In re In re Wet-Jet International, Inc., 235 B.R. 142 (D.Mass. 1999); In re Yellow Cab Co-op. Assn., 144 B.R. 505 (D.Colo 1992); Quarter Moon Livestock Co., 116 B.R. 775, 778 (Bank. D.ID 1990); In re I.D. Craig Service Corp., 118 B.R. 335 (Bankr. W.D.Pa. 1990); In re Giggles Restaurant, Inc., 103 B.R. 549, 553 (Bankr. D.N.J. 1989); In re Stavola/Manson Elec. Co., Inc., 94 B.R. 21, 24 (Bankr. D. Conn. 1988); In re King Brand Food Products, Inc., 52 B.R. 109 (Bankr. Fla. 1985); In re Acoustic Fibers Sound Systems, Inc., 20 BR 769 (Bankr. S.D. Ind. 1982).

Absolute title to the stock was transferred to Golden Meadows, L.C. on July 21, 2000, under Utah law. The stock certificate, a

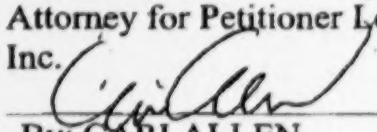
negotiable instrument, endorsed by Cari Allen on July 21, 2000 and delivered and remained in the possession of Golden Meadows Properties at issue in this proceeding, which was never examined or discussed by one single lower Federal court, which says on its face the explicit notation "I hereby sell, assign and transfer unto Golden Meadows Properties, LLC 1,000,000 shares represented by the within Certificate." No Federal court has ever reconciled this fact of record with the plain language of Utah Code Annotated §43-1-2 which flatly and unequivocally states "Title to any security receipt. . . may be transferred by delivery by any person in possession of the same. . . A person to whom title is so transferred . . .shall have absolute title." Under Utah law, title to the stock was transferred to Golden Meadows Properties, L.C. when Ms. Allen endorsed over the certificate and had it delivered on July 21, 2000. To the same effect, *see also* Nevada Revised Statutes 104.3203 Transfer of instrument; rights acquired by transfer.

With the exception of Bankruptcy Judge Thurman in the TRO hearing, who tried to set the proper stage for Bankruptcy Judge Clark to determine ownership of the corporation and ability to act for it, none of the Federal judges have grappled with the facts that determine whether the petition was properly filed to begin with. A corporation was dismembered by deceit and due process to it denied. This Court should not countenance the shallow and cursory, disdainful treatment by the lower courts given to a corporation, the denial to it of a right to counsel and ignoring the substance of its and its lawful management's disputes over the improper invocation of Federal Bankruptcy Court jurisdiction for the malicious purpose to destroy the corporation and defeat creditors rather than assure their payment through ongoing business.

Respectfully submitted,



By: NATHAN W. DRAGE
Attorney for Petitioner Log Furniture, Inc.



By: CARI ALLEN
Petitioner *Pro Se*